

CAVEB L. MCGILLVARY, PRO SE
#1222665/SB1 #1023176 NJSP
PO BOX 861 TRENTON, NJ 08625

JANUARY 4, 2024

CLERK, USDC - DNJ
US COURTHOUSE
4TH & COOPER STS.

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JAN 10 2024

AT 8:30 _____ M
CLERK, U.S. DISTRICT COURT - DNJ

CAMDEN, NJ 08101-2797

RE: MCGILLVARY V. DAVIS

CIVIL ACTION NO. 1:23-CV-04185-CPO

ON PETITION FOR WRIT OF HABEAS CORPUS

DEAR CLERK:

PLEASE FIND ENCLOSED & FILE ONTO THE
DOCKET THE ORIGINAL & 3 COPIES OF MY
REPLY TO THE STATE'S RESPONSE TO MY MOTION
TO RECUSE JUDGE O'HEARN, & DECLARATION
IN SUPPORT THEREOF; & PROOF OF SERVICE
THEREOF; IN THE ABOVE-CAPTIONED MATTER.

THANK YOU KINDLY,

~~CAVEB~~

CAVEB L. MCGILLVARY

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

January 4, 2024

Hon. Christine P. O'Hearn, U.S.D.J.
US Dist. Ct. - DNJ
US Courthouse
4th and Cooper Streets
Camden, NJ 08101-2797

RE: McGillvary v Davis
Civil Action No. 1:22-cv-04185-CPO
Hon. Christine P. O'Hearn, U.S.D.J.

Dear Judge O'Hearn;

Please accept this letter in lieu of a more formal brief in reply to the Respondent's response to my motion to recuse Judge O'Hearn from this proceeding.

Plaintiff adopts by reference his attached declaration in support of this reply pursuant to Fed. R. Civ. P. 10(c); and avers that it shows the following:

1.) On June 22, 2022, Plaintiff filed the habeas corpus petition in this matter.

2.) On December 12, 2023, the Clerk filed Plaintiff's initial complaint in McGillvary v Scutari onto the docket at 1:23-cv-22605-RMB-MJS. Plaintiff specifically alleges in paragraph "76" that, "On June 22, 2022, Plaintiff filed a petition for writ of habeas corpus in the USDC-DNJ; which was automatically assigned to Arleo under DNJ L. Civ. R. 40.1 because of her previously presiding over an action involving the same set of facts"; in specific reference to this case. Plaintiff then alleges numerous constitutional and RICO violations related to this case, in paragraphs "75-116" of that complaint.

JANUARY 3

3.) On or about ~~January 2~~, 2024, Chief Judge of the 3rd Circuit Michael Chagares entered an order in McGillvary v Scutari, Dkt No. 1:23cv-22605-RMB-MJS; ECF 4; that said case, and all related cases, were thereafter reassigned to Judge John ~~R. Padova~~ ^{MILTON YOUNG} of the Eastern District of Pennsylvania pursuant to 28 U.S.C. 292(b).

4.) The instant case is related to McGillvary v Scutari, as described in "2"; and is therefore subject to the order described in "3".

On December 12, 2023, Respondent filed a response to Plaintiff's motion to recuse Judge O'Hearn, which Plaintiff received on January 2, 2024.

This reply to Respondent's response is now before the Court.

LEGAL ARGUMENT

POINT I: THE CHIEF JUDGE OF THE 3RD CIRCUIT HAS ORDERED THAT ALL CASES RELATED TO MCGILLVARY V SCUTARI ARE REASSIGNED TO HON. JOHN ~~R. PADOVA~~ ^{MILTON YOUNG}, AND THIS COURT IS BOUND TO FOLLOW THE 3RD CIRCUIT'S MANDATE BY REASSIGNING THE INSTANT CASE TO JUDGE ~~PADOVA~~ ^{YOUNG}

A mandate issued by the 3rd Circuit leaves no room for discretion by the District Court, but requires adherence to the terms of the order issued by the superior Court. United State v Mitlo 714 F.2d 294, 298 (CA3 1983); and In Re Chambers Dev. Co., Inc. 148 F.3d 214, 224 (CA3 1998)("Mandamus is appropriate where a District Court has failed to adhere to the mandate of an appellate Court")

Although a motion to recuse would normally be left to the sound discretion of the District Court, the Chief Judge of the 3rd Circuit, Michael Chagares, has declared that it is in the Public Interest to order "all related cases" to McGillvary

v Scutari, which includes this case, reassigned to Judge Padova
of the E.D.PA under 28 U.S.C. 292(b). See 1:23-cv-22605-JRP.
It is incontrovertible that this is a related case, since this
case is specifically identified in the pleadings of Scutari.
See 1:23-cv-22605-JRP, ECF 1, paragraph "76". This mandate leaves
no room for discretion, but requires the Court forthwith to
reassign this case to Judge Padova.

Conclusion

For all the foregoing reasons, this Court is respectfully
urged to follow the mandate of the 3rd Circuit and forthwith
reassign the instant matter to Hon John R. Padova of the US
District Court for the Eastern District of Pennsylvania.

Respectfully Submitted,

Caleb L. McGillvary
In Propria Persona

1/4/24
ENCL:
CC: FILE

CALEB L. MCGILLVARY, PRO SE
#1222665/SBI#1023176 NJSP
PO Box 861 TRENTON, NJ 08625

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CALEB L. MCGILLVARY
PETITIONER

v.

BRUCE DAVIS, ADMINISTRATOR
NJSP, ATTORNEY GENERAL
OF NJ

RESPONDENT

CIVIL ACTION NO.

1:22-cv-04185-CPO

HON. CHRISTINE P. O'HEARN, USDJ
ON PETITION FOR HABEAS CORPUS

DECLARATION IN SUPPORT OF REPLY

CALEB L. MCGILLVARY ("PETITIONER") HEREBY
DECLARES PURSUANT TO 28 U.S.C. 1746:

1.) I AM THE PRO SE PETITIONER FOR HABEAS
CORPUS IN THE ABOVE CAPTIONED MATTER

2.) ON JUNE 22, 2022, I FILED THE HABEAS CORPUS
PETITION IN THIS MATTER

3.) ON DECEMBER 12, 2023, THE CLERK FILED MY
INITIAL COMPLAINT IN MCGILLVARY V. SCUTARI ONTO
THE DOCKET AT 1:23-cv-22605-RMB-MJS. I
SPECIFICALLY ALLEGES IN PARAGRAPH "76" OF THAT
COMPLAINT THAT, "ON JUNE 22, 2022, PLAINTIFF

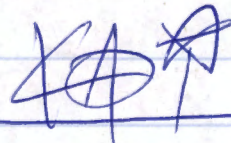
FILED A PETITION FOR WRIT OF HABEAS CORPUS IN THE USDC-DNJ; WHICH WAS AUTOMATICALLY ASSIGNED TO ARLIO UNDER DNJ L. CIV. R. 40.1 BECAUSE OF HER PREVIOUSLY PRESIDING OVER AN ACTION INVOLVING THE SAME SET OF FACTS"; IN SPECIFIC REFERENCE TO THIS CASE. I THEN ALLEGES NUMEROUS CONSTITUTIONAL & RICO VIOLATIONS RELATED TO THIS CASE, IN PARAGRAPHS "75" - "116" OF THAT COMPLAINT.

4.) ON OR ABOUT JANUARY 2, 2024, CHIEF JUDGE OF THE 3RD CIRCUIT MICHAEL CHAGARES ENTERED AN ORDER IN MCGILLVARY V. SCUTARI, DKT. NO. 1:23-CV-22605-RMB-MJS; ECF 4; THAT SAID CASE, & ALL RELATED CASES, WERE THEREAFTER REASSIGNED TO JUDGE JOHN ^{MILTON} ~~R.~~ ^{YOUNGE} ~~PADOVA~~ OF THE EASTERN DISTRICT OF PENNSYLVANIA PURSUANT TO 28 USC 292(b).

5.) THE INSTANT CASE IS RELATED TO MCGILLVARY V. SCUTARI, AS DESCRIBED IN "3"; & IS THEREFORE SUBJECT TO THE ORDER DESCRIBED IN "4"

6.) ON OR ABOUT JANUARY 2, 2024, I RECEIVE THE STATE'S RESPONSE TO MY MOTION TO REUSE JUDGE O'HEARN IN THIS MATTER. I SIGNED A POSTAGE RECEIPT FOR THIS PARCEL

WHICH WAS WITNESSED BY A CORRECTIONAL OFFICER, WHO OPENED THE ENVELOPE CONTAINING THE DOCUMENT IN MY PRESENCE & GAVE ME THE DOCUMENT. A COPY OF THIS RECEIPT & ENVELOPE IS ATTACHED HERETO AS "EXHIBIT A". I DECLARE UNDER PENALTY OF PERJURY THAT ALL DOCUMENTS ATTACHED HERETO ARE TRUE & ACCURATE COPIES OF THE ORIGINALS, & THAT THE FOREGOING STATEMENTS ARE TRUE & ACCURATE. EXECUTED THIS 4TH DAY OF JANUARY, 2024.



CALEB L. MCGOVERN, PRO SE
#1222665/SB1#1023176
NJSP PO Box 861
TRENTON, NJ 08625-0861

EXHIBIT A

G-21

NEW JERSEY STATE PRISON

(Rev. 9/7/17)

Legal Mail/Accountable Non Legal Mail

Process and Delivery Receipt #

C McMillan 1222665 GR 1/5/24

Inmate Name Number Wing Date

Crim Justice 14/19/24

Sender Address Date (Postmark)

llc 1/3/24

Processed by: (Print and Sign) Date

Traffic Control Officer (if relocated) (Print and Sign) Date

Issued by: (Officer Print and Sign) Wing Date

C McMillan KAP GR 1/2/24

Accepted by Inmate: (Print and Sign) Date

Refused by Inmate: (Print and Sign) Date

Item#

☐ Legal Mail☐ Non Legal Accountable☐ Regular First Class (No special handling)☐ Inter Office (Truck Mail)☐ Registered/Certified☐ Return Receipt☐ Priority Mail☐ Express Mail☐ Common Carrier Overnight or Priority Delivery
(FedEx, UPS, etc.) carrier: _____

Housing Officer: If Inmate has moved, hand deliver immediately to Traffic Control.

Traffic Officer: Promptly locate Inmate housing location in ITag and arrange for immediate delivery.

WHITE - Mailroom I/M file

YELLOW - Inmate Receipt

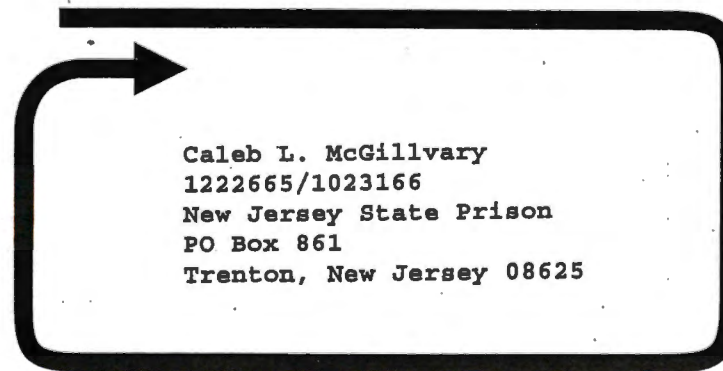


US POSTAGE PAID PITNEY BOWES

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N.J. DIVISION OF CRIMINAL JUSTICE
Hughes Justice Complex P.O. Box 085
TRENTON, NJ 08625-0085



Caleb L. McGillvary
1222665/1023166
New Jersey State Prison
PO Box 861
Trenton, New Jersey 08625

FIRST CLASS MAIL

CLASS MAIL

JAN 10 2024

AT 8.00 M
CLERK, U.S. DISTRICT COURT - DNJ

PROOF OF SERVICE

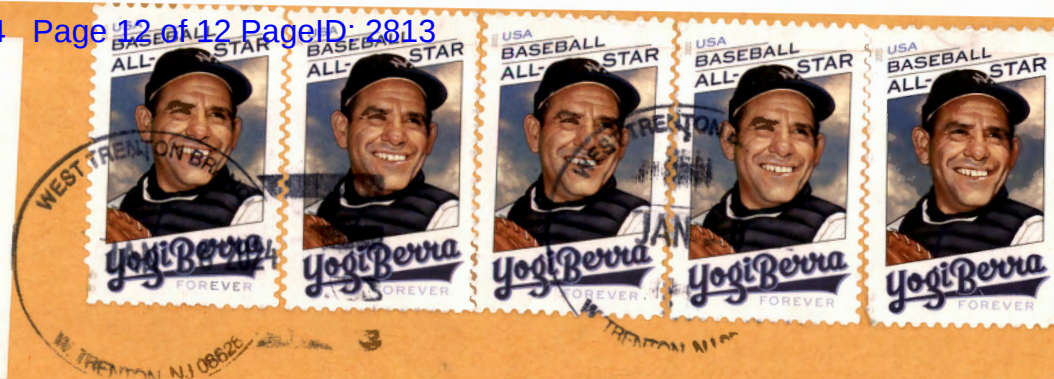
I, CALEB L. MCGILLVARY, HEREBY DECLARE PURSUANT TO 28 USC 1746 THAT ON TODAY'S DATE I PLACE IN THE INSTITUTIONAL MAILING SYSTEM WHERE I'M IN STATE CUSTODY AT NJ STATE PRISON 3RD & FEDERAL STS. TRENTON, NJ 08625 WITH 1ST CLASS POSTAGE PREPAID TO BE SENT VIA USPS MAIL THE ORIGINAL & 3 COPIES TO THE CLERK AT USDC-DNJ 4TH & COOPER STS. CAMDEN, NJ 08101 FOR FILING; & A COPY TO COUNSEL FOR RESPONDENT AMANDA G. SCHWARTZ AT OAG-HJC 25 MARKET ST. PO BOX 085 TRENTON, NJ 08625-0085; OF MY REPLY TO THE STATE'S RESPONSE TO MY MOTION TO RECUSE JUDGE O'HEARN, & DECLARATION IN SUPPORT THEREOF.

I HEREBY INVOLVE THE PRISON MAILBOX RULE. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE & ACCURATE. EXECUTED THIS 4TH DAY OF JANUARY, 2024



CALEB L. MCGILLVARY, PRO SE
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NSSP PO BOX 861 TRENTON, NJ
08625-0861

CMC GILL VARY
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TRENTON, NJ
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CLERK
US DIST. CT. - DNY
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CLERK, U.S. DISTRICT COURT - DNJ

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